

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 The United States of America,
5 Plaintiff
6 v.
7 Marc Brattin,
8 Defendant

2:13-cr-00161-JAD-CWH-1
Order Granting in Part and Denying in
Part Motion for Judicial
Recommendation to the Federal
Bureau of Prisons

[ECF No. 107]

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10 Marc Brattin, who is representing himself pro se from the Federal Bureau of Prisons'
11 ("BOP") Metropolitan Detention Center ("MDC") in Los Angeles, California seeks a judicial
12 recommendation to the BOP regarding reentry confinement.¹ The government responds that this
13 court lacks authority to make the requested recommendation under Federal Rule of Criminal
14 Procedure 35 because more than 14 days have passed since Brattin's sentence was imposed.² I grant
15 in part and deny in part Brattin's motion and recommend that the BOP place Brattin in a residential
16 reentry center ("RCC") for the last nine months of his sentence.

17 **Background**

18 On February 2, 2015, Brattin pleaded guilty to two counts of bank fraud and two counts of
19 wire fraud without the benefit of a written plea agreement.³ On May 6, 2015, I sentenced Brattin to
20 25 months per count to run concurrently,⁴ and I recommended to the BOP that Brattin be designated
21 to serve his sentence at "the Camp at FCI Victorville, California."⁵ In his motion, Brattin represents
22 that the BOP instead designated him to the MDC, where he self-surrendered on September 14, 2015,

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24 ¹ ECF No. 107.

25 ² ECF No. 108.

26 ³ ECF No. 54.

27 ⁴ ECF No. 68.

28 ⁵ ECF No. 71.

1 and currently resides.⁶ Brattin's projected release date is July 3, 2017.

2 Brattin represents that he has maintained "clear conduct" while in the custody of the BOP.⁷
3 He states that he is an "orderly with a gate pass" at MDC, which means that "he has been deemed
4 as the lowest security risk possible and is permitted to go outside the MDC each day to conduct his
5 duties."⁸ He also recently volunteered in assisting BOP staff to prepare for an upcoming inspection
6 by "painting, remodeling, addressing safety/code issues, and by the disposal of trash and materials."⁹
7 Because the MDC is not a minimum-security camp (for which Brattin purportedly qualifies) he is
8 subject to "a more strenuous environment that does not offer the same level of programming and
9 rehabilitative services of a camp."¹⁰

10 Brattin states that he expects to be transferred to a residential reentry center ("RRC") on
11 February 18, 2017 (4.5 months before his release date) based on the recommendation of his "unit
12 team."¹¹ He seeks a recommendation from this court that he receive an additional 4.5 months of
13 reentry placement for a total reentry term of 9 months,¹² and states that his prison counselor has
14 indicated that the institution would consider a recommendation by the sentencing court for earlier
15 entry into an RRC.¹³ Brattin requests a recommendation that he receive a total of 9 months pre-
16 release treatment, including 6.5 months in an RRC and 2.5 months of home confinement.¹⁴ In its

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18 ⁶ Brattin indicates that he served approximately six months of his sentence at the Nevada Southern
19 Detention Center in Pahrump after the government indicted him in another case. That case was
ultimately dismissed, and Brattin was transferred back to the MDC.

20 ⁷ ECF No. 107 at 2.

21 ⁸ *Id.*

22 ⁹ *Id.*

23 ¹⁰ *Id.*

24 ¹¹ *Id.* at 3.

25 ¹² *Id.*

26 ¹³ *Id.*

27 ¹⁴ *Id.* at 3–4.

two-page opposition, the government argues that I lack jurisdiction to amend Brattin’s judgment under Federal Rule of Criminal Procedure 35 because more than 14 days have passed since Brattin’s sentence was imposed.¹⁵ The government does not address my authority to make the requested recommendation without amending the judgment.

Discussion

A. 18 U.S.C. § 3621(b)

Title 18 Section 3621(b) of the United States Code provides that the BOP has discretion to place an inmate into “any available penal or correctional facility,” including an RRC placement,¹⁶ and to “direct the transfer of an inmate from one penal correctional facility to another” “at any time.”¹⁷ In determining which facility to place the inmate in, the BOP must consider:

(1) the resources of the facility contemplated; (2) the nature and circumstances of the offense; (3) the history and characteristics of the prisoner; (4) any statement by the court that imposed the sentence—(A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or (B) recommending a type of penal or correctional facility as appropriate; and (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(A)(2) or title 28.¹⁸

Section 3624(c), on the other hand, deals exclusively with the placement of a prisoner during the final portion of his sentence. It provides:

The Director of the [BOP] [must], to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust and to prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.¹⁹

¹⁵ See ECF No. 108.

¹⁶ *Rodriguez v. Smith*, 541 F.3d 1180, 1187 (9th Cir. 2008).

¹⁷ 18 U.S.C. § 3621(b).

¹⁸ *Id.*

¹⁹ 18 U.S.C. § 3624(c)(1).

1 In administering § 3624(c), courts consider the statutory factors outlined in 18 U.S.C. § 3621(b).²⁰

2 **B. Brattin’s request is granted in part and denied in part.**

3 Under Federal Rule of Criminal Procedure 35, a court may, within 14 days after sentencing,
4 “correct a sentence that resulted from arithmetical, technical, or other clear error.” And Rule 36
5 allows a court to “correct a clerical error in a judgment, order, or other part of the record, or correct
6 an error in the record arising from oversight or omission” at any time. The government is correct
7 that the 14-day window for correcting Brattin’s sentence under Rule 35 has long since passed, and I
8 do not find that Rule 36 is a proper basis for amending the judgment. Both of these rules allow for
9 correction of technical or clerical errors only and do not contemplate substantive changes in the
10 court’s judgment.

11 Nonetheless, I may recommend placement in an RRC without correcting the judgment.²¹ I
12 find that such a recommendation—separate and apart from the judgment—is appropriate in this case.
13 I find that Brattin has demonstrated that placement in an RRC for the final nine months of his
14 sentence, if practicable, would ease his successful transition back into society. And given his prison
15 disciplinary record, Brattin appears to be an appropriate candidate for early RRC placement. I do not
16 recommend, however, that Brattin serve the last 2.5 months of his sentence in home confinement as
17 he requests.²² I therefore grant in part and deny in part Brattin’s motion, and **I recommend that the**
18 **BOP place Brattin in a in a BOP-authorized RRC for the last nine months of his sentence.**

23 ²⁰ *Rodriguez*, 541 F.3d at 1184–85.

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25 ²¹ See e.g. *United States v. Palacios*, 2007 WL 2410389, *3 (S.D. Cal. July 14, 2007) (declining to
26 amend judgment under Federal Rule of Criminal Procedure 36 and instead issuing order
27 recommending placement in an RRC for final six months of incarceration). I recognize, however,
28 that though the BOP must consider my recommendation, it has no obligation to follow or adopt it.

²² Though I do not expressly recommend that Brattin serve any portion of his sentence in home
confinement, I express no opinion about whether home confinement would be appropriate.

Conclusion

Accordingly, IT IS HEREBY ORDERED that **Brattin's motion for judicial recommendation to the Federal Bureau of Prisons [ECF No. 107] is GRANTED in part and DENIED in part:** the court RECOMMENDS that the Bureau of Prisons place Brattin in a residential reentry center for the last nine months of his sentence.

Dated August 23, 2016



Jennifer A. Dorsey
United States District Judge